98TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT 98-157
Part 1

FEDERAL TRADE COMMISSION AUTHORIZATION ACT OF 1983

MAY 16, 1983.—Ordered to be printed

Mr. MOAKLEY, from the Committee on Rules, submitted the following

REPORT

together with

MINORITY AND SUPPLEMENTAL VIEWS

[To accompany H.R. 2974 which on May 11, 1983, was referred jointly to the Committees on Energy and Commerce and Rules]

[Including cost estimate of the Congressional Budget Office]

The Committee on Rules, to whom was referred the bill (H.R. 2974) to authorize appropriations for the Federal Trade Commission, to provide for congressional review of Commission rules, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SCOPE OF REPORT

Under clause 1(q) of rule X, the Committee on Rules is vested with responsibility for the "rules and joint rules . . . and the order of business of the House."

In addition to its well understood responsibility for resolutions relating to the order of business, the committee receives original referral of all bills and resolutions changing or affecting the rules of the House.

H.R. 2974, in addition to amending the Federal Trade Commission Act to authorize appropriations, contains (in title II) provisions relating to congressional review of final rules issued by the Commission, commonly known as a "legislative veto."

The Committee on Rules shares joint jurisdiction with the Committee on the Judiciary over legislative veto bills, which contain

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rules of the House and are applicable to federal agency rulemaking generically. In the case of such bills, applicable to specific agencies or programs, the jurisdiction of the Committee on Rules is shared with the standing committee or committees of the House having responsibility for measures relating to the agency or program in question.

Although H.R. 2974 was jointly referred without limitation, the committee asserts jurisdiction only over certain provisions of title II and has confined its mark-up and reporting to that subject.

Title I of H.R. 2974 authorizes appropriations for the Federal Trade Commission for fiscal year 1984, at the level expected to be recommended by the Committee on Energy and Commerce.

Title II proposes to extend through that fiscal year a legislative veto substantially similar to provisions contained in section 21 of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252). Under its terms that provision expired September 30, 1982, but is made applicable to the fiscal year ending September 30, 1983 by provisions of the joint resolution making continuing appropriations for fiscal year 1983 (section 101(d) of Public Law 97–377).

In all other particulars of the bill, to committee defers, without recommendation, to any report which may be made by the Committee on Energy and Commerce.

Committee Consideration

H.R. 2974 was introduced on May 11, 1983 by Mr. Moakley and the bill was referred jointly to the Committee on Energy and Commerce and the Committee on Rules.

H.R. 2970 was introduced on May 11, 1983 by Mr. Florio, based on prior hearings and consideration by the Subcommittee on Commerce, Transportation, and Tourism. The bill was referred jointly to the Committee on Energy and Commerce and the Committee on Rules.

Under the provisions of section 402(a) of the Congressional Budget Act of 1974, as modified by an order of the House, the bills are required to be reported by each committee to which they are referred by May 16th. The Committee on Energy and Commerce is expected to act on H.R. 2970 within that time constraint.

In meeting its responsibilities under section 402(a), the Committee on Rules held hearings on May 12th on H.R. 2970 and H.R. 2974.

Testimony was heard from Messrs. Levitas and Broyhill and a statement was submitted by Mr. Moakley.

By voice vote, the committee ordered H.R. 2970 reported without recommendation. No amendments were offered.

By voice vote, the committee ordered H.R. 2974 reported favorably, after rejecting by a voice vote a motion to postpone, without prejudice, further consideration. No amendments were offered.

Basis of Committee Action

The committee is aware of the delicacy of the process that has brought forward H.R. 2970 and has elected to report that measure without recommendation in order to cause the least possible dis-

ruption to the difficult process of reauthorizing the Federal Trade Commission.

But the committee has serious concerns about H.R. 2970 and believes that H.R. 2974 represents a substantially more cautious approach to the legislative veto applicable to the Federal Trade Commission.

H.R. 2970 contains a three-year authorization for the Federal Trade Commission and makes numerous changes in law relating to agency authorities, practice, and procedures. Most of these changes are in the form of permanent amendments to the Federal Trade Act.

One of these changes (section 9) would enact the temporary legislative veto now applicable to Federal Trade Commission rules into permanent law.

The committee would note that the specific temporary provision [section 21 of the Federal Trade Commission Improvements Act of 1980 (15 USC 57a-1) proposed to be enacted into permanent law has been determined to be unconstitutional by the federal court and the matter has been decided through the appellate level. And the decision of the U.S. Court of Appeals for the circuit in which both the Federal Trade Commission and the Congress sit, the Federal court with the broadest experience in regulatory affairs, is unequivocal. The committee anticipates that a decision will be made by the Supreme Court in the next term.

In this context, the committee views the approach recommended by H.R. 2970 as inappropriate and recommends against enacting a legislative veto, applicable to the Federal Trade Commission, into permanent law at this time.

The committee wishes to note that, in favorably reporting H.R. 2974, the committee does not abandon the constitutional reservations it expressed in reporting on this matter last year (H. Rept. 97-809, Part 2), which were subsequently confirmed by the decision of the U.S. Court of Appeals.

But H.R. 2974 provides a vehicle by which the concerns of proponents of an FTC veto can be met, within a context that more suitably balances the delicate responsibility of Congress to maintain comity between the respective roles of the legislative and judicial branches.

Title I of the bill proposes a one year authorization and defers, with respect to level of funding, to the recommendation being made by the Committee on Energy and Commerce.

Title II proposes to extend, but only for the term of that authorization, a legislative veto applicable to the Federal Trade Commission, in a form substantially similar to that proposed by H.R. 2970. This would extend the veto and the authorities of the Federal Trade Commission through the end of the Supreme Court term in which this issue is expected to be decided. But it also would assure that the matter would be finally resolved during the present Congress.

The committee wishes to note that, although H.R. 2974 would extend the veto in a form substantially similar to H.R. 2970, there are differences. Most are technical and should present relatively little controversy. The basis for the refinements proposed in H.R. 2974 are discussed in the following summary.

Summary and Analysis

Short title

Section 1 states that this Act may be cited as the "Federal Trade Commission Authorization Act of 1983."

Authorization

Section 101 amends section 24 of the Federal Trade Commission Act to authorize appropriations for the Commission for the fiscal year ending September 30, 1984 and not to exceed $70,705,000. This is the level proposed by the Committee on Energy and Commerce in H.R. 2970.

Submission and review of rules

Section 201 requires the Commission, after promulgating a final rule, to submit such final rule to the Congress for review and provides that the rule shall not become effective if, before the end of the period of 90 calendar days of continuous session of Congress after the date such final rule is submitted to the Congress, the Congress adopts a concurrent resolution disapproving such final rule. But, it provides that the rule may become effective at the end of a period of 35 days of continuous session of Congress after the date such final rule is submitted to the Congress if no concurrent resolution disapproving such final rule is introduced in either House of the Congress. These provisions are similar to section 26(a) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970.

A substantial improvement, proposed by the committee in section 201(c)(2), would permit a rule to become effective immediately if either House of Congress defeats a concurrent resolution disapproving such a final rule. The committee is aware of no reason to leave a rule in a pending status after Congress has voted to let the rule go into effect by defeating a disapproval resolution. In addition, this provides Congress with a method—pro forma defeat—to short-cut the statutory delay to allow a non-controversial rule to take effect. A similar procedure had proved effective with respect to reorganization plans.

Exercise of rulemaking power of the House

Section 202(a) is a disclaimer which states that the section 202 is enacted as an exercise of the rulemaking power of the House, changes existing rules only to the extent it is inconsistent, and is subject to change in the same manner as any other rule of the House. The committee notes that the authority of each House to "determine the rules of its proceedings" is constitutionally grounded and the power of each House to modify rules it choses to enact in statutory form is unaffected by whether that statute carries such a disclaimer. Nevertheless such language is customary and the committee consideres its inclusion appropriate.

The provision is similar to section 26(b)(1) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970. However, that bill and most other legislative vetoes, have attempted to boilerplate rules applicable to procedure of both Houses. Since the parliamentary practice of the two Houses are at considerable vari-

ance, the committee recommends separate sections for procedure in each House.

Referral to committee

Section 202(b) provides that any final rule submitted to the House and any concurrent resolution disapproving such final rule shall be immeditely referred in accordance with the rules of the House.

In its practical effect, the provision is substantially similar to section 26(b)(2)(A) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970, relating to referral of resolutions disapproving FTC rules, and section 26(a)(1) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970, relating to referral of FTC rules. Each of these provisions of H.R. 2970 would require referral to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation, respectively, whether or not that committee has jurisdiction over the subject matter of the rule.

The committee strenuously objects to standard legislative veto bills which designate a committee which will receive referrals under a bill. The practice of the House is established, from before the beginning of this century, that the Speaker receives all bills, resolutions, and executive communications and refers them to committee in accordance with the rules and precedents.

The committee is aware of no case in which a committee other than the Committee on Energy and Commerce would qualify for referral, but perceives no reason to prevent the Speaker from honoring a legitimate assertion of jurisdiction. As a purely technical matter, it also should be noted that statutes are more permanent than committees and the legislative veto law now applicable to the Federal Trade Commission, for example, requires referral to the Committee on Interstate and Foreign Commerce, a committee which arguably no longer exists.

Out of an abundance of caution, H.R. 2974 includes provisions [subsections (c) and (d) of § 202] addressing one possible procedural ambiguity which might arise under a multiple referral. These provisions ensure that the matter is placed before the House by a discharge petition even if the resolution is at different status in committees.

Discharge

Section 202(c) provides that, if a committee to which a disapproval resolution is referred does not report the resolution before the end of the period of 75 calendar days of continuous session of the Congress after such referral, it shall be in order to move to discharge such committee from further consideration of such concurrent resolution. The petition must be signed by one-fifth of the Members of the House. The motionis privileged and is debatable for one hour, the time to be equally divided between a Member favoring and a Member opposing the motion. An amendment to the motion is not in order and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The provision is identical to section 26(b)(2)(C)(ii) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970.

Consideration

Section 202(d) provides that, when a disapproval resolution has been reported or discharged, it shall be at any time thereafter in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution. The motion is privileged and is not debatable. An amendment to the motion is not in order nor is it in order to reconsider the vote by which the motion is agreed to or disagreed to. These provisions largely codify the existing practice. The Speaker would have authority, similar to that provided under clase 1(b) of rule XXIII, to cause the House to resolve into committee without motion, if a motion to discharge has been agreed to.

The provision is similar to section 26(b)(4)(A) of the Federal Trade Commission Act as amended by section 9 H.R. 2970.

Floor consideration

Section 202(e) provides for two hours of general debate on a disapproval resolution, with time equally divided between a Member favoring and a Member opposing the concurrent resolution. At the conclusion of debate, the House would vote on the adoption of the resolution. No amendment, motion to recommit, or motion to reconsider is permitted.

Section 26(b)(4)(B) of the Federal Trade Commission Act as amended by section 9 H.R. 2970 proposes ten hours of general debate, which is subject to a motion to limit debate, and requires the chair to allocate time to individual Members. The committee considers the customary approach of majority and minority floor managers more appropriate. The committee also considers two hours to be a more appropriate debate time. Although the committee does not recommend permiting a motion to further limit debate, it would note that the two mamagers could yield back any unneeded time.

Coordination of consideration

Section 202(f) provides that if, prior to the disposition of a disapproval resolution of the House, the House receives a resolution of the Senate with respect to the same final rule, the vote in the House shall occur on the Senate resolution.

The intent of the provision is similar to that of section 26(b)(3) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970.

Consideration of other resolutions

Section 202(g), prohibits the consideration, after the House agrees to a disapproval resolution, of any other concurrent resolution of the House with respect to the same final rule.

The provision is identical to section 26(b)(6) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970. The committee considers the rule appropriate but believes that neither this title, nor the rulemaking provisions of any legislative veto law of which it is aware, in any manner, limit the discretion of the Speaker to decline to recognize a Member for any purpose as clearly dilatory as the one contemplated by this provision.

Exercise of rulemaking power of the Senate

Section 203(a) is a disclaimer which states that the section is enacted as an exercise of the rulemaking power of the Senate, changes existing rules only to the extent is inconsistent, and is subject to change in the same manner as any other rule of the Senate. The committee notes that the authority of each House to "determine the rules of its proceedings" is constitutionally grounded and the power of each House to modify rules it choses to enact in statutory form is unaffected by whether that statute carries such a disclaimer. Nevertheless such language is customary and the committee considers its inclusion appropriate.

The provision is similar to section 26(b)(1) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970. However, that bill and most other legislative vetoes, have attempted to boilerplate rules applicable to procedure of both Houses. Since the parliamentary practice of the two Houses are at considerable variance, the committee recommends separate sections for procedure in each House.

Under the rules of comity, the committee proposes no rules of the Senate but assumes that the other body will amend this section to provide any procedural rules it considers appropriate.

Repromulgation

Section 204(a) permits the Commission to promulgate a new rule modifying one which has been disapproved by Congress. The new rule may be based upon the rulemaking record of the final rule disapproved by Congress; or such rulemaking record and the record established in any supplemental rulemaking proceedings conducted by the Commission in accordance with section 553 of title 5, United States Code, in any case in which the Commission determines that it is necessary to supplement the existing rulemaking record. The new rule may contain such changes as the Commission considers necessary or appropriate. The new rule would be required to be submitted to Congress and would be subject to review in accordance with title II of the bill.

Section 26(c) of the Federal Trade Commission Act, as amended by H.R. 2970 is identical.

Judicial review

Section 204 provides that congressional inaction on a disapproval resolution shall not be construed as an expression of approval of the rule, and shall not be construed to create any presumption of validity with respect to such final rule.

Section 26(d) of the Federal Trade Commission Act as amended by section 9 of H.R. 2970 also would apply the same standard to rejection of a resolution.

The committee is dubious that Congress has the ability, by statute, to identify a class of subsequent votes and instruct the courts that they are meaningless.

By the enactment of any legislative veto, the Congress (and even its individual Members) accept a significant responsibility for the rules to which the veto applies. This is particularly true if Congress actually votes down a disapproval resolution, but equally can apply

to the question of congressional inaction. This presumption has to be especially strong when the legislative veto in question, like the present case, provide a method by which a very small minority of the House can require a vote on the subject.

In this regard, the committee would note that both the U.S. Court of Appeals for the District of Columbia [1] and the U.S. Supreme Court [2] have discussed congressional inaction in connection with decisions on agency rules which were subject to legislative veto procedures.

Definitions and general provisions

Section 205 deals with technical and definitional matters relating to calculation of continuity of session, format of disapproval resolutions, and applicability of the review procedures.

The committee notes that section 205(a)(1) cures a procedural problem, posed by the prior legislative veto applicable to the Commission, by providing that continuity of session of Congress is broken only by adjournment sine die at the end of a Congress. The expiring law calculates continuity on the basis of each session. In the one experience with this procedure, the "used car rule," it was necessary for the rule to be promulgated and reviewed by Congress twice and the status of the rule was left in doubt for months more than was necessary.

The provisions are identical to subsections (f) and (g) of section 26 of the Federal Trade Commission Act as amended by section 9 of H. R. 2970.

Effective dates

Section 206(a) provides that the provisions of this title shall take effect on the date of enactment of this Act and shall cease to have any force and effect on September 30, 1984, the expiration of the term of the authorization provided in title I.

Section 206(b) continues the applicability of certain provisions of section 21 of the Federal Trade Commission Improvements Act of 1980, the legislative veto currently applicable to the Commission.

Extension of section 21(a) is intended to prevent any disruption to the calculation of the pending period of any rule submitted prior to the enactment of H. R. 2974. Section 12(d) of H. R. 2970 is similar to the provision.

Extension of section 21(f) is intended to continue expedited court procedures regarding review of the constitutionality of the veto contained in that section, with respect to a pending case. Since that particular case is expected to be heard by the Supreme Court, in its

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[1] In a decision of the U.S. Court of Appeals (D.C. Circuit) in *State Farm Automobile Insurance Company* v. *Department of Transportation*, 680 F.2d 206 (D.C. Cir. 1982) the Court observed that the rule in question had been subject to a legislative veto and stated that "Congress allowed the standard to take effect when neither of the concurrent resolutions needed for disapproval was passed" and alluded to the comparative ease of obtaining a legislative veto, as compared to a law. Although the Court specifically conceded that "failure to disapprove the standard cannot be read as a congressional enactment," the decision does rely on the existence of a legislative veto as part of a "legislative history as a whole" which "suggests a congressional commitment . . . " 680 F.2d at 228.

[2] In a decision of the U.S. Supreme Court in *North Haven Board of Education* v. *Bell* 102 S. Ct. 1912, 1924 (1982), the Court cited the existence of a legislative veto applicable to the rule in question as part of a legislative history which "lends weight to the argument that coverage of employment discrimination was intended."

next term, the committee considers it appropriate to continue the applicability of the statute under which the courts have heretofore handled that case.

Section 26(e) of the Federal Trade Commission Act as amended by section 9 of H. R. 2970 would enact the court procedures into permanent law.

Matters Required Under the Rules of the House

Comparative print

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the existing rules. Although the bill would make significant changes in the rules of the House, it would do so in a bill and in a manner that does not directly amend the Rules of the House of Representatives.

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Clause 3 of rule XIII requires the report of each committee on a bill or joint resolution to contain a comparative print relating to the measure:

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

CHAP. 311.—An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

* * * * * * *

Sec. 24. There are authorized to be appropriated to carry out the functions, powers and duties of the Federal Trade Commission not to exceed $42,000,000 for the fiscal year ending June 30, 1975; not to exceed $47,091,000 for the fiscal year ending June 30, 1976; and not to exceed $50,000,000 for the fiscal year ending in 1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; [and] not to exceed $80,000,000 for the fiscal year ending September 30, 1982 *and not to exceed $70,705,000 for fiscal year ending September 30, 1984.*

Sec. 25. This Act may be cited as the "Federal Trade Commission Act".

Congressional Budget Office estimates

Clause 2(l)(3)(B) of rule XI requires each committee report to contain any statement required by section 308(a) of the Congressional Budget Act of 1974. That section does not apply to this bill.

Clause 2(l)(3)(C) of rule XI requires each committee report to contain any cost estimate and comparison prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 13, 1983.

Hon. CLAUDE PEPPER,
Chairman, Committee on Rules,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2974, the Federal Trade Commission Authorization Act of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill No.: H.R. 2974.

2. Bill title: Federal Trade Commission Authorization Act of 1983.

3. Bill status: As ordered reported by the House Committee on Rules, May 12, 1983.

4. Bill purpose: H.R. 2974 authorizes the appropriation of $70.7 million in fiscal year 1984 to carry out the activities of the Federal Trade Commission (FTC). The bill would also revise procedures for Congressional review of Commission rules. The President is requesting $59.5 million for the FTC in 1984, and fiscal year 1983 appropriations to date are $63.6 million.

5. Estimated cost to the Federal Government:

[by fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level	70.7				
Estimated outlays	64.6	6.1			

Including outlays from prior years' budget authority, outlays for the FTC would be approximately $70.1 million in 1984.

The costs of this bill fall within budget function 370.

Basis of estimate: For purposes of this estimate, it was assumed that the amount authorized in the bill would be appropriated prior to the beginning of the fiscal year. Outlays reflect historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Mary B. Maginniss.
10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Committee cost estimate

Clause 7(a) of rule XI requires certain committee reports to contain committee cost estimates. That provision does not apply to the Committee on Rules but the committee explores the cost implications of all measures it considers.

The committee believes that any legislative veto has cost implications, which are difficult to quantify, on both the legislative branch and on any agency to which it applies. The committee, however, is aware of no appropriate methodology to quantify those costs.

In respect to all other costs under title I, the committee defers to any findings which may be made by the Committee on Energy and Commerce.

Oversight findings

Clause 2(1)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has made no special oversight findings in connection with the bill and notes that, under the rules of the House, oversight responsibility with regard to the Federal Trade Commission is vested in the Committee on Energy and Commerce.

The committee would refer to its statement under the section of this report titled "Scope of Report" and defers, on this matter, to any findings which may be made by the Committee on Energy and Commerce.

Oversight findings and recommendations of the Committee on Government Operations

Clause 2(1)(3)(D) of rule XI requires each committee report to contain any oversight findings and recommendations made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X. No such findings and recommendations have been received.

Inflation impact statement

Clause 2(1)(4) of rule XI requires each committee report to contain a statement relating to the inflationary impact of the enactment of that measure. The committee is aware of none.

The committee would refer to its statement under the section of this report entitle "Scope of Report" and defers, on this matter, to any statement which may be made by the Committee on Energy and Commerce.

Views of committee members

Clause 2(1)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report.

Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity:

SUPPLEMENTAL VIEWS OF HON. JOHN JOSEPH MOAKLEY

It is fairly seldom that the sponsor of a bill reported without amendment finds it necessary to submit supplemental views. But the situation involving re-authorization of the Federal Trade Commission is always a very unusual and difficult political and parliamentary situation.

The principal question placed before the Committee on Rules in the consideration of H.R. 2970 and H.R. 2974 is to determine the appropriate responsibility of Congress in the enactment of an unconstitutional law.

For four years, the Subcommittee on Rules of the House has conducted hearings on the legislative veto and has received testimony from able and respected scholars who effectively argue that the veto is constitutional, and from equally able and respected scholars who equally effectively argue that it is not. My own opinion on the constitutional issues remains ambivalent.

But there is no ambivalence about the veto before us in the pending legislation. The legislative veto applicable to the Federal Trade Commission is simply and clearly unconstitutional. This is not the academic and theoretical argument that has whirled around the legislative veto for years. This is a straightforward statement of fact. The matter has been decided through the appellate level. And the decision of the U.S. Court of Appeals for the circuit in which both the Federal Trade Commission and the Congress sit, the Federal court with the broadest experience in regulatory affairs, is unequivocal. As a matter of law, this provision is unconstitutional until and unless the Supreme Court rules otherwise. It seems certain that the high court will hear this case in its next term, which begins in the Fall.

In this context, the approach recommended by H.R. 2970 seems singularly inappropriate and I oppose efforts to enact a legislative veto, applicable to the Federal Trade Commission, into permanent law at this particular moment.

Although, entirely apart from constitutional concerns, I question the wisdom of Congress assuming the function of superintending the day to day details of government, I am aware of the clear majority sentiment of the House on this question. In this regard, I have put forward H.R. 2974, which represents a concept about which I have some personal reservations, to accommodate the desires of the House in a format that more suitably addressed the responsibility of Congress to maintain comity between the respective roles of the legislative and judicial branches, pending final Supreme Court resolution of this issue. If the Supreme Court reverses the Court of Appeals, I see no reason for any supporter of the FTC legislative veto to doubt their ability to enact this veto as a permanent amendment to the Federal Trade Commission Act. Nor does

there seem to be any reason to doubt that this could be accomplished during the present Congress.

In considering H.R. 2970 and H.R. 2974, the Rules Committee needed to develop an approach intended to meet three goals: (1) to discharge our obligations under section 402(a) of the Budget Act; (2) to avoid taking any premature action that could disrupt the work done to date on H.R. 2970 in the Committee on Energy and Commerce; and (3) to preserve the broadest possible options available to this committee to assert its appropriate jurisdiction for the rules of the House.

Specifically, with reference to the second point, the committee chose to report H.R. 2970 without amendment and without recommendation in order to cause no disruption to the ongoing work in the Committee on Energy and Commerce. Certainly, the Rules Committee is aware of the delicacy of the negotiations which have brought H.R. 2970 to this point. And, equally, the committee is aware of the significant concessions which have been made by Members representing very divergent viewpoints in shaping this bill. Specifically, I would like to note and commend the integrity and energy with which the gentleman from New Jersey (Mr. Florio) has carried out his responsibilities as chairman of an important and difficult subcommittee. I would also note the important contributions of the gentleman from North Carolina (Mr. Broyhill) on this matter, who has approached some very sensitive issues with considerable caution and flexibility and, in particular, has contributed significantly to a fair and appropriate compromise on the issue of FTC responsibilities for regulation of professions.

But, with respect to the third point, the Rules Committee has a responsibility to address the increasing frequency with which the committees of the House have found the jurisdiction of this committee to be an attractive arena in which to either negotiate, or simply to "blur," policy concerns difficult to resolve within their own jurisdiction.

Over the two centuries that the rules of the House have evolved, a system of procedure has developed that works reasonably well. From time to time, reforms are needed and should be responsibly implemented.

But inefficiences derive from the two divergent goals of having rules at all. The rules of the House are intended to protect the rights of minorities to be heard—both the minority party and ideological minorities within or across party lines. But equally, they are intended to protect the right and obligation of a majority to act—again, both the majority party and majorities which may form across party lines.

The rules protect the House and they protect each Member of the House. And the rules of the House that have become a standard part of this and other legislative veto represent a growing, and I think dangerous, tendency to regard the rules as some kind of unnecessary inconvenience, to be mowed down and plowed through, with far too little thought to the cumulative effect of the scores of such measures we enact every year on the legitimate rights of this institution and of its Members.

JOE MOAKLEY.

MINORITY VIEWS ON H.R. 2974

We have no objection to the Rules Committee asserting and exercising jurisdiction over legislation from other committees if it includes provisions which alter House Rules and procedures. In fact, we encourage it.

Unfortunately, in the case of H.R. 2970 (Rep. Florio) and H.R. 2974 (Rep. Moakley), both of which contain authorizations for the Federal Trade Commission (FTC) and special House procedures for disapproving proposed FTC rules—the so-called two-House legislative veto—the Rules Committee has asserted its jurisdictional claim but has not exercised it in a thoughtful and responsible fashion.

The Rules Committee was notified late Tuesday, May 10, that it would meet at 1:30 p.m. on May 12 to consider an unnumbered FTC authorization bill. On May 11 both H.R. 2970 and H.R. 2974 were introduced—the former of which was ordered reported from an Energy and Commerce subcommittee the previous day; the latter of which originated with a single member of the Rules Committee (and not the subcommittee which he chairs), and which underwent an amazing overnight metamorphosis from a three-year to one-year authorization between the time the original draft was circulated and the bill was introduced. We use the term "overnight" metamorphosis in the literal, not figurative, sense because the final draft appeared on our doorstep sometime during the night prior to the May 12 meeting.

On Thursday, May 12, the Rules Committee met, heard a brief explanation of the situation from one of the majority members, heard briefly from two witnesses, and proceeded to report the Florio bill (H.R. 2970) without recommendation, and favorably report the Moakley bill (H.R. 2974) without amendment. Ironically, the author of the latter bill was not present to explain or defend his measure though he was kind enough to provide every member with a ten-page statement. Perhaps the most telling sentence from that statement is the following: "Neither of these bills existed until just over 24 hours ago and I am unable to challenge any member of the committee who would assert that this is not a very satisfactory way to approach the important issues presented to us."

Presumably the reason for all the haste was the rapidly approaching May 15 deadline under the Budget Act (changed to May 16 this year) for reporting all authorizing legislation. We certainly commend the chairman of the Rules Committee for his determination to avoid waiving that deadline (sec. 402(a) of the Budget Act) with respect to measures requiring Rules Committee action. But, the simple reporting of the Commerce Committee bill without recommendation would have satisfied that objective.

One must ask then why it was deemed necessary to introduce a second bill which made only minor changes in the only matter

under our jurisdiction—legislative veto—and yet major changes in matters not directly under our jurisdiction—reducing the authorization from three years to one year and deleting from the Commerce Committee version certain recommended changes in the permanent FTC law, including making the legislative veto permanent and placing certain restrictions on FTC jurisdiction over agricultural cooperatives and marketing orders and over professionals, among other things?

The author of H.R. 2974 has indicated in his written statement that he felt it was necessary to introduce a separate bill because of his concerns "in a number of jurisdictional and political issues," and his intention "to slightly broaden the policy and parliamentary options presented to the committee at this hearing and at subsequent hearings on a rule."

The author goes on to note in his statement that the main reason he has reduced the authorization, and with it the legislative veto provision over FTC rules, to one-year is the expectation that the Supreme Court will rule on the constitutionality of the existing FTC legislative veto in its next term, and that the lower courts to date have held it to be unconstitutional. And the author boldly proclaims his agreement with the appellate court's holding: "I think it is important to realize that the specific provision proposed to be enacted into permanent law is unconstitutional . . . . I do not propose that the committee abandon the constitutional reservations expressed in reporting on this matter last year (H. Rept. 97-809, Part 2), which were subsequently confirmed by the decision of the U.S. Court of Appeals."

It may be recalled that the Rules Committee in the 97th Congress reported an amendment to the FTC authorization from the Energy and Commerce Committee (H.R. 6995) to strike the legislative veto provision in its entirety on grounds it was unconstitutional. That amendment was defeated in the House by voice vote. The bill failed to clear the Senate however, thus necessitating the present bill.

Thus, readers of this Rules Committee bill should not be misled to believe that the Rules Committee majority has changed its mind about the constitutionality of the legislative veto by reporting a one-year extension of that provision. It has admittedly reported what it considers to be an unconstitutional bill, simply to protect its political and parliamentary options. This may be the first instance in the history of this Republic in which a committee has put aside its constitutional oath for more narrow partisan and strategic interests, and clearly admitted to doing so. From a political standpoint, the author of H.R. 2974 admits that the one-year authorization was decided upon over the three-year extension of the legislative veto because this Congress and the current President might feel more secure about the legislative veto than a future Congress and President. And so, the author continues, "H.R. 2974 agrees to continue the status quo through the next court term but not beyond the next federal election."

As we indicated in our minority views to the FTC authorization bill in the 97th Congress (H.Rept. 97-809, pt. 2, pp. 33-38), the same author's own subcommittee print in the 96th Congress concluded that the legislative veto was constitutional, and another print in

the 97th Congress cautioned against drawing any conclusions on the constitutionality of the veto as "premature." As we stated in our minority views, "Ultimately, it is for the Supreme Court, not the Congress, to make that final determination." But we are more persuaded by the author's earlier arguments on the constitutionality of the legislative veto than we are by his more recent conversion.

Putting aside the consitutional questions for now, the biggest argument against the Rules Committee bill's one-year authorization is the painful and fitful history of the Federal Trade Commission over the years, recounted in full in our minority views last year. If anything, that history of lapsing authorizations and appropriations should make clear that a more permanent legislative veto is the best mechanism available for insuring the continued existence of the FTC and proper congressional controls and oversight of its operations. By reverting to one-year leases and leashes on its life, we threaten to again strangle it in our recurrent and redundant fights over the legislative veto and specific restrictions on its operations. In the last Congress not only did we fail to enact a new authorization, but the funding for the agency fell through the crack in the regular appropriation bill on a point of order and was only miraculously picked up in the second continuing appropriations bill by insuring inclusion of the legislative veto and other restrictions from the previous authorization bill.

Finally, we would especially caution against one procedural option which presents itself now that the Rules Committee has reported its own version of an FTC authorization, and that is the possibility that the Rules Committee could make its own bill the base for amendment under a rule and thus preclude the Energy and Commerce Committee from even offering a three-year extension or any changes in permanent law. This would certainly accomplish the objective of the author of preventing any lengthier extension of the legislative veto provision, even by floor amendment, but it would mark a dramatic shift in jurisdictional responsibilities. In effect the Rules Committee would be exerting primary jurisdiction over the FTC, even though it would not be saddled with the oversight responsibilities and legislative burden involved in reporting annual authorizations.

Rather than countenancing a basic shift in committee jurisdictions under House Rule X and dictating to another committee the length of an authorization for an agency under its exclusive jurisdiction, the Rules Committee, of all committees, should be enforcing a strict adherence to jurisdictional lines to avoid confusion and conflict, and should be encouraging, rather than discouraging, multi-year authorizations which will promote greater stability and oversight at the same time. To originate a separate bill because a committee has introduced a bill which touches slightly on our jurisdiction is a case of gross overkill and power-grabbing that sets a bad example for other committees who will soon enough be coming to us for rules and resolutions of problems they have with other committees. We are in an especially delicate, compromisable position in directly overstepping our legitimate bounds of jurisdiction since we will have the final say on the structuring of floor debate and amendment on this important legislation.

For all the above reasons, we unsuccessfully attempted to postpone indefinitely, and without prejudice, further consideration of H.R. 2974 (Moakley) and simply report H.R. 2970 (Florio), without recommendation. Had we been doing the real work of our committee under our original jurisdiction over House Rules and procedures, we would have focused on the legislative veto procedures of the Florio bill and improved on them if necessary. But, given the time constraints, this was not possible. But neither was it necessary nor wise to originate and report another bill with which only one of our members was familiar and which could seriously undermine the jurisdiction of another committee. No amount of constitutional or political considerations can justify this, especially if it involves the disingenuous ploy of reporting a bill the author considers to be unconstitutional.

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